

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 330 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL  
and  
MR.JUSTICE M.H.KADRI

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?No
2. To be referred to the Reporter or not?  
No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?  
No
5. Whether it is to be circulated to the Civil Judge?  
No

-----  
VINOD GOVIND

Versus

STATE OF GUJARAT

-----  
Appearance:

MR MJ BUDDHBHATTI for appellant  
Mr. L.R. Pujari, APP, for Respondent No. 1

-----  
CORAM : MR.JUSTICE J.M.PANCHAL andMR.JUSTICE M.H.KADRI

Date of decision:08-09/09/97

ORAL JUDGMENT : ( Per: Kadri, J.)

In this appeal, which is filed under Section 374 of the Code of Criminal Procedure, 1973, appellant has challenged judgment and order dated May 10, 1989, rendered by the learned City Additional Sessions Judge, Court No.8, Ahmedabad, in Sessions Case No.302 of 1988, by which the appellant is convicted under Section 302 of the Indian Penal Code and Section 135 of the Bombay Police Act, and sentenced to suffer imprisonment of life. No separate sentence is imposed on the appellant for the offence under Section 135 of the Bombay Police Act.

P.W. No.2, Rameshbhai Khemabhai Vankar, was residing with his elder brother Manubhai Khemabhai Vankar (hereinafter referred to as 'deceased') in house No.1239/22 in Shakar-Ghanchi's chawl situated near Rajpur Post Office in Gomtipur locality, Ahmedabad. The appellant and his uncle, namely, Jayantilal alias Jano, were residing in Abu-Kashai's chawl, which is also known as Kundawali chawl. According to the prosecution case, on June 10, 1988, at about 10 p.m. the deceased was found standing near pan-galla of Natubhai. The deceased was heavily drunk and a big crowd of people had collected around. Mafatlal Kalidas, who is uncle of the deceased, persuaded the deceased to go to his house, but the deceased got annoyed and gave slaps to Mafatlal. Jayantilal alias Jano, who is uncle of the appellant, was also one of the members of the said crowd. He also persuaded the deceased to go to his house. The deceased asked Jano and other people to go to their houses. On hearing these words, Jano got annoyed and told the deceased that he would teach him a lesson.

It is further the case of the prosecution that on June 11, 1988, at about 8 p.m. the appellant came to the house of the deceased and enquired about the deceased. At that time, the deceased was not present in the house. However, P.W. No.2 Rameshbhai was present. The appellant had some discussion with P.W. No.2 Rameshbhai and, at the time of leaving the house of P.W. No.2 Rameshbhai, the appellant informed him that he would kill the deceased.

It is further the case of the prosecution that at about 11.45 p.m. on June 11, 1988, the appellant was seen standing near the pan-galla of Natubhai with a gupti. The deceased came there on a by-cycle. When the deceased and the appellant came near each other, exchange of words took between them. The appellant took out the gupti from its scabbard and gave gupti blow to the deceased, as a result of which the deceased fell down on the ground bleeding profusely. The appellant ran away with the gupti. It is the prosecution case that, when the appellant gave gupti blow to the deceased, P.W. No.2 Rameshbhai, P.W. No. 4. Babubhai Ramjibhai, and P.W. No.5 Ramanbhai Panabhai were present and had witnessed the appellant giving gupti blow to the deceased. After the deceased fell down, P.W. No.2 Rameshbhai and P.W. No.5, Ramanbhai Panabhai took the deceased in an auto-rickshaw to Shardaben Hospital. At Shardaben Hospital, they were told to go to the Civil Hospital and, therefore, the deceased was taken to the Civil Hospital. At the Civil Hospital, Dr. Sutaria, who examined the

deceased, declared him dead. A vardhi was sent through the police constable who was present at the Civil Hospital to Gomtipur Police Station about the death of the deceased. The said vardhi was noted in the register at Gomtipur Police Station at about 1.30 a.m. on June 12, 1988. PSI Mr. K.B. Gohil, who was discharging his duties at the relevant time at Gomtipur Police Station, was about to leave for the Civil Hospital after receipt of vardhi, when P.W. No.2, Rameshbhai, came to the police station and lodged complaint against the appellant at 2.30 a.m. The complaint was registered as C.R. No.I-204/88. PSI Mr. Gohil held inquest on the dead body of the deceased and sent the dead body for post-mortem. P.W. No.1, Dr. Ravindra Shrikrishna Bhise, along with Dr. Palelkar, performed post-mortem of the dead body of the deceased. PSI Mr. Gohil went to the place of the incident and drew panchanama in presence of two independent witnesses. Blood stained clothes found from the body of the deceased were seized under a panchanama. On June 12, 1988, further statement of the complainant, i.e. P.W. No.2, was recorded by PSI Mr. Gohil. On June 12, 1988, PSI Mr. Gohil recorded statement of Babubhai Ramjibhai (P.W. No.4) and Ramanbhai Panabhai (P.W. No.5) and other witnesses. On June 13, 1988, PSI Mr. Gohil handed over investigation to PI Mr. G.R. Chavda of Gomtipur Police Station. The appellant came to be arrested by P.I Mr. Chavda on June 13, 1988. While the appellant was in the custody, he expressed his willingness to show the place where he had concealed the gupti with which he had inflicted blow on the deceased. Two independent witnesses were called by P.I. Mr. Chavda and, in their presence, a preliminary panchanama was drawn. Thereafter, the appellant and two independent witnesses were taken to the place where the appellant had hidden gupti. Muddamal gupti was found hidden from the house, which was shown by the appellant and it was recovered under a panchanama which was drawn under Section 27 of the Indian Evidence Act. Muddamal gupti along with clothes of the deceased as well as clothes of the appellant and other incriminating articles were sent to the Forensic Science Laboratory for analysis. On June 14, 1988, P.I. Mr. Chavda recorded statement of other witnesses. After receipt of reports from the Forensic Science Laboratory, P.I. Chavda filed chargesheet against the appellant for the offences punishable under Section 302 of the Indian Penal Code and Section 135 of the Bombay Police Act, in the court of the learned Metropolitan Magistrate, Court No.10, Ahmedabad. As offence under section 302 is exclusively triable by a Court of Session, the learned Metropolitan Magistrate, Court No.10, Ahmedabad, committed the case for its trial

to the City Sessions Court, at Ahmedabad. The above case came to be registered as Sessions Case No.302 of 1988.

Charge Exh.4 was framed against the appellant by the learned City Sessions Judge on August 31, 1988 for the offences punishable under Section 302 of the Indian Penal Code and Section 135 of the Bombay Police Act. The charge was read over and explained to the appellant, who pleaded not guilty to the same and claimed to be tried. To prove the case against the appellant, the prosecution examined following witnesses: (1) Dr. Ravindra Shrikrishna Bhise, P.W. No.1, Exh.8. (2) Rameshbhai Khemabhai, P.W. No.2, Exh.18, (3) Jayantibhai Parmabhai, P.W. No.3, Exh.22, (4) Babubhai Ramjibhai, P.W. No.4, Exh.27. (5) Ramanbhai Panabhai, P.W. No.5, Exh.28, (6) Gunwantbhai Amrabhai, P.W. No.6, Exh.32, (7) PSI Kiritsinh Bhimsinh Gohil, P.W. No.7, Exh.35. (i) P.I. Govindsinh Raisinh Chavda, P.W. No.8, Exh.39. The prosecution also produced documentary evidence such as, vardhi, case papers of civil hospital, FIR lodged by P.W. No.2 Rameshbhai, inquest panchanama, post-mortem notes, panchanamas of scene of offence, recovery of clothes of the deceased as well as the appellant, discovery panchanama of muddamal gupti, report of the FSL, etc. to substantiate the charge framed against the appellant. After recording of evidence of prosecution witnesses was over, the learned Judge questioned the appellant generally on the case and recorded statement under Section 313 of the Code of Criminal Procedure, 1973. In his statement, the appellant denied the case of the prosecution, and stated that he was innocent and was falsely involved in the case. However the appellant did not lead any evidence in his defence.

The learned Additional City Sessions Judge, Court No.8, Ahmedabad, after hearing the arguments of the learned Additional Public Prosecutor as well as defence counsel, recorded the following conclusions:

- (i) Deceased Manubhai Khemabhai died homicidal death;
- (ii) The appellant had motive to commit murder of Manubhai, as Manubhai had insulted the uncle of the appellant on June 10, 1988.
- (iii) The evidence of P.W. No.2, who is eye-witness, is reliable and trustworthy, and his presence at the place of incident which took place at 11.45 p.m. on June 11, 1988, is proved. His evidence proves the guilt of the appellant.
- (iv) The oral evidence of P.W. No.4, Babubhai Ramjibhai and P.W. No.5, Ramanbhai Panabhai, fully corroborates the oral evidence of P.W. No.2,

Rameshbhai;

- (v) P.W. No.4 and P.W. No.5 had also witnessed the incident and their presence at the place of incident is also proved beyond reasonable doubt by the prosecution.
- (vi) Exh.31, which is vardhi, received from the Civil Hospital by the Gomtipur Police Station, is FIR in the case.
- (vii) Version of eye-witnesses is natural and truthful which inspires confidence.
- (viii) Discovery of muddamal gupti at the instance of the appellant also corroborates the prosecution case that the appellant had committed murder of deceased Manubhai by giving blow with gupti.

On the basis of abovereferred to conclusions, the learned Additional City Sessions Judge, Court No.8, Ahmedabad, convicted the appellant under Section 302 of the Indian Penal Code and Section 135 of the Bombay Police Act, and imposed sentence of R.I. for life by the impugned judgment, which has given rise to filing of the present appeal.

Learned counsel for the appellant, Mr. Buddhbhatti, has taken us through the entire evidence on record, and submitted that, as the evidence of complainant P.W. No.2 Rameshbhai Khemabhai Vankar is full of contradictions and his presence at the place of incident is highly doubtful, his evidence should not be accepted. It is further submitted by the learned counsel for the appellant that P.W. No.4 Babubhai Ramjibhai and P.W. No.5 Ramanbhai Panabhai are got-up witnesses and as their presence at the place of incident is highly doubtful, their evidence deserves to be discarded. The learned counsel for the appellant has further submitted that Exh.31, which is treated as FIR in this case, shows that, as per the version given by informant P.W. No. 2 Rameshbhai to Dr. Sutaria, the incident had taken place at 22.45 hrs. (i.e. 10.45 p.m.) whereas the evidence of P.W. No.4 Babubhai Ramjibhai and P.W. No.5 Ramanbhai Panabhai clearly shows that they had arrived at the place of incident after 11.30 p.m. and, thus, there is major contradiction with regard to the time at which the incident had taken place, the prosecution case should not be believed. The learned counsel for the appellant has emphasized that no blood was found at the place of incident and also that no blood was found on the muddamal gupti and, therefore, the evidence of eye-witnesses was not corroborated. It is further emphasized by the learned counsel for the appellant that the complainant in his complaint (Exh.19) has stated that the deceased was

given gupti blow on his left side of the chest, but he is not corroborated by medical evidence. It is stressed by the learned counsel for the appellant that, after performance of the post-mortem on the dead body of the deceased, it was realised that the deceased had a puncture wound on the right side of the chest, and, by way of clarification, further statement of P.W. No.2, Rameshbhai was recorded by PSI Mr. Gohil, just to get corroboration to the version which was given in the complaint Exh.19, and, therefore, the impugned judgment should be set aside. The learned counsel for the appellant also submitted that there is inconsistency in the ocular and the medical evidence with regard to the injuries found on the body of the deceased and, therefore, the genesis of the prosecution case is doubtful. The learned counsel for the appellant urged that the evidence of eye-witnesses does not inspire confidence and, as there are serious lapses in the prosecution case, the appeal should be allowed and the appellant should be acquitted of the charges framed against him.

Learned Additional Public Prosecutor, Mr. L.R. Pujari, has strenuously urged that, in this case, the prosecution has examined three eye witnesses, who have witnessed the incident and their presence at the place of the incident having been proved, their sworn testimony should be relied upon. It is further argued that the appellant had motive to commit murder of the deceased, as the uncle of the appellant was insulted by the deceased on June 10, 1988. The learned Additional Public Prosecutor has further urged that on June 11, 1988, the appellant had gone to the house of the deceased and threatened before P.W. No.2, Rameshbhai, who is brother of the deceased, that he would kill the deceased, and as motive is proved, prosecution case against the appellant should be believed. The learned Additional Public Prosecutor has further argued that, though there are minor contradictions in the evidence of three eye-witnesses, the prosecution had established beyond reasonable doubt that the appellant was the person who had caused murder of the deceased and the appeal should be dismissed.

It is not in dispute that deceased Manubhai died homicidal death on June 11, 1988. The evidence of P.W. No.1, Dr. Ravindra Shrikrishna Bhise, supported by the post-mortem notes and inquest panchanama, also proves that the deceased died due to shock and haemorrhage as a result of the stab injury sustained on the right side of the chest of the deceased. Therefore, we are of the

opinion that the finding recorded by the learned Judge that the deceased died homicidal death is eminently just and is hereby upheld.

P.W. No .2, Rameshbhai, is brother of deceased Manubhai. As per his evidence, he along with the deceased was residing in house No.1239/22 in Shakar-Ghanchi's chawl situated near Rajpur Post Office in Gomtipur locality, Ahmedabad. According to the witness, on June 10, 1988, at about 10 p.m. near the pan-galla of Natubhai, the deceased had come heavily drunk and a big crowd of people had collected near the cabin of Natubhai where the uncle of the deceased, namely, Mafatlal Kalidas, was also present. The witness has stated that Mafatlal persuaded the deceased to go to his house but the deceased got annoyed and gave slaps to his uncle Mafatlal, whereupon uncle of the appellant Jayantilal alias Jano, who was also present near the cabin of Natubhai requested the deceased to go to his house, but the deceased drove away the persons who had gathered near the cabin of Natubhai including the uncle of the appellant Jano. The witness has deposed that the uncle of the appellant, Jano, was enraged and told the deceased that he would teach him a lesson and, thereafter, the uncle of the appellant had gone away from that place. As per the evidence of P.W. No.2, Rameshbhai, on June 11, 1988, at about 8 p.m. the appellant came to his house and threatened the witness that he would kill the deceased. As per the say of the witness, on June 11, 1988 at 10.00 p.m. he had gone to the cabin of Natubhai, and was standing near the cabin along with his brother Manubhai. He claimed that at about 11.45 p.m. he saw his brother Manubhai riding on bi-cycle towards Zanzarka society. The witness claimed that Zanzarka colony was visible from the cabin of Natubhai. It is stated by the witness that the appellant took out the gupti from its scabbard and gave gupti blow on the right side of the chest of the deceased, as a result of which the deceased fell down. He further deposed that, when the appellant gave gupti blow to the deceased, Ramanbhai Panabhai (P.W. No.5) and Babubhai Ramjibhai (P.W. No.4), were present.

According to the witness, he and P.W. No.5, Ramanbhai Panabhai, took the deceased in an auto-rickshaw to Shardaben Hospital, where they were told to go to the Civil Hospital. As per the version of the witness, the deceased was brought in the same auto-rickshaw to the Civil Hospital, where the doctor, on examination, declared him dead. The witness deposed before the court that after death of the deceased, he went to Gomtipur

Police Station to lodge complaint, which was recorded at Gomtipur Police Station by PSI, Mr. Gohil. He clarified that, because of the death of his brother Manubhai, he was perplexed and, therefore, he could not state in his complaint Exh.19 correctly that the appellant had inflicted gupti blow on the right side of the chest of the deceased. During cross examination, the witness admitted that deceased Manubhai was not having permanent employment. He also admitted that his father used to advise the deceased to earn, as he was finding it difficult to run the house. He conceded that the deceased used to come late in the night. In the cross examination, the witness acknowledged that the deceased used to drink heavily. It is also admitted by the witness that there were five/six criminal cases filed against the deceased. The witness admitted that, in the complaint Exh.19, he had not stated that the deceased was coming on a bi-cycle at the time of incident. The witness admitted that P.W.No.4, Babubhai Ramjibhai who was resident of village Umta, was respected by his family members and they used to address him as their uncle. It is also stated by the witness that P.W. No.4 Babubhai Ramjibhai was staying at Sukhramnagar which is at distance of one and half kilometer from their chawl.

The evidence of P.W. No.2, Rameshbhai, who is the brother of deceased Manubhai, requires to be closely scrutinised. In the complaint, which is lodged by the witness, it is stated that, after the deceased fell down, the deceased was carried in an auto-rickshaw to Gomtipur Police Station, but they did not go to the police station, and went to Shardaben Hospital, and from Shardaben Hospital, they brought the deceased to the Civil Hospital where he was declared dead. It is difficult to believe the version of the complainant that injured Manubhai was taken to Shardaben Hospital. No explanation is offered by the prosecution that, for what reason, injured Manubhai was not treated at Shardaben Hospital and was directed to be taken to the Civil Hospital. At the Civil Hospital, the deceased was examined by Dr. K.P. Sutaria at 0.45 a.m. on June 12, 1988. Vardhi Exh.31, which is treated as FIR, shows that the informant had narrated the incident before Dr. K.P. Sutaria. In the vardhi Exh.31, it is stated that Manubhai Khemabhai Vankar, aged about 32, resident of Rajpur Gomtipur Shakar-ni Ghanchi's chawl, who was given blow with weapon like gupti by one Vinod Govindbhai Vankar (appellant) at 22.45 hrs. on June 11, 1988, was brought to the hospital by his younger brother Rameshbhai Khemabhai on June 12, 1988 at 0.45 hrs. Thus, it is



evidently clear that the deceased was brought to the Civil Hospital at 0.45 hrs. on June 12, 1988. It is worthwhile to mention that time of the assault, as stated in the vardhi Exh.31, is 22.45 hrs on June 11, 1988, whereas in the substantive evidence before the court, P.W. No.2 Rameshbhai has deposed that the appellant had inflicted gupti blow on the deceased at 11.45 p.m. on June 11,1988. In the earliest version, names of the so-called eye witnesses are not given which is significant in the facts of the case. Exh.31, which is treated as FIR, clearly goes contrary to the substantive evidence of the complainant before the court. If the incident had taken place at 22.45 hrs on June 11,1988, then it knocks down the prosecution case that two eye witnesses, namely, P.W. No.4, Babubhai Ramjibhai, and P.W. No.5, Ramanbhai Panabhai, were present at the place of the incident. In our opinion, the evidence of P.W. No.2, Rameshbhai, does not inspire confidence and is not trustworthy and reliable. It is an admitted fact that, after the gupti blow was inflicted on the right side of the chest of the deceased, there was profuse bleeding and the deceased had collapsed on the ground. P.W. No.2 Rameshbhai and P.W. No.5 Ramanbhai had lifted the deceased and taken him to the hospital in an auto-rickshaw. If the deceased was profusely bleeding, then clothes of the complainant and P.W. No.5 Ramanbhai would have been stained with blood. The investigating officer had not seized the clothes of P.W. No.2 Rameshbhai and P.W. No.5 Ramanbhai at all. Investigating officer PSI Gohil had drawn panchanama of scene of offence on June 12,1988 at about 8.45 a.m. The said panchanama is produced on the record at Exh.33. It is specifically mentioned in the panchanama Exh.33 that the panchas and the investigating officer had minutely examined the place of incident, but no blood stain or blood was found. No control earth or incriminating article was recovered from the place of incident. If the deceased was given gupti blow and that he was bleeding profusely, then blood stains or blood would have been found at the place of incident. Absence of blood at the place of incident also raises serious doubt in our mind that the place of incident is not one which was shown by the complainant to the investigating officer. It is the prosecution case that, while the appellant was in custody, he had shown his willingness to show the place where he had concealed gupti with which he had inflicted blow on the person of the deceased. Discovery panchanama Exh. 23 is produced by the prosecution under which muddamal gupti was recovered. Muddamal gupti was not stained with blood and though it was sent to the Forensic Science Laboratory for analysis, no trace of human blood

was found on gupti. As per the evidence of P.W. No.2, Rameshbhai, the appellant had given one blow on the right side of the chest of the deceased. The evidence of P.W. No.1 Dr. Ravindra Shrikrishna Bhise, who performed post-mortem on the dead body of the deceased, shows that he found two external injuries, namely, (i) a stab wound on the right side of chest, and, (ii) a stab wound on left lateral aspect of abdomen just below the costal margin in anterior auxiliary line, horizontal, on the dead body of the deceased. In the post-mortem notes (Exh.11) also, two external injuries are mentioned. These external injuries were corresponding to the internal injuries as mentioned in Column No.20 of the post-mortem notes. The evidence of P.W. No.2 Rameshbhai is contrary to the medical evidence of Dr. Bhise. As per the evidence P.W. No.2 Rameshbhai, the appellant had inflicted only one blow on the chest of the deceased, whereas, as per the evidence of Dr. Bhise, he had found two external injuries on the body of the deceased. This also creates doubt in our mind about presence of P.W. No.2 Rameshbhai at the place of incident. For the reasons stated hereinabove, we are of the opinion that P.W. No.2 Rameshbhai is not the witness of truth and his presence at the place of incident is highly doubtful and his evidence does not inspire confidence at all.

P.W. No.4, Babubhai Ramjibhai (Exh.27) deposed before the court that on June 11,1988 at about 9 p.m. he had gone to meet his cousin Chhaganbhai Valabhai who was residing at Shakar Ghanchi's chawl. He claimed that he remained at the house of his cousin Chhaganbhai until 11.30 p.m. and as he was serving in the third shift in Monogram Mill, he left the house of his cousin at 11.30 p.m. on a bi-cycle. He deposed that, when he was passing near the post office, he saw the deceased standing near the lavatories which are situated at Zanzarka colony, whereas the appellant with gupti in his hands was going towards Manubhai. According to him, out of curiosity, he slowed down his bi-cycle as he saw the appellant going with naked gupti in his hand, and saw the appellant giving gupti blow on deceased Manubhai. As per his evidence, because of the blow given by the appellant with gupti, Manubhai fell down and the appellant ran away towards culvert of Sarangpur Cotton Mill No.2. The witness deposed that, after the deceased fell down, he went near the place of incident, and saw that the deceased had sustained two injuries on his body. He asserted that he went to his Mill after the deceased was taken in an auto-rickshaw to the hospital. He deposed that, on the next day morning, he learnt that the deceased had succumbed to injuries. In cross

examination, the witness deposed that he learnt about the murder of deceased Manubhai when he returned from the Mill. He claimed that one Joitabhai had informed him that Manubhai had been murdered. It is evidently clear that this witness had arrived at the place of incident after 11.30 p.m. FIR Exh.31 shows that the appellant had inflicted gupti blow on the deceased at 22.45 hrs on June 11,1988. FIR Exh.31 clearly shows that, when the appellant had inflicted gupti blow on the deceased, witness was not present at the place of incident. It is worthwhile to mention that, in cross examination, the witness admitted that he learnt about murder of deceased Manubhai on the next day morning when he came out of the Mill.

P.W. No.5 Ramanbhai Panabhai (Exhg.28) has deposed that he was serving in Sarangpur Mill No.2 and was residing at Shakara-Ghanchi's chawl. He has deposed that deceased Manubhai was his cousin. He claimed that deceased Manubhai and P.W.No.2 Rameshbhai, being brothers, were residing together at the said chawl. He also claimed that the appellant is known to him and was residing at Abu Kashai's chawl, which is known as Kundawali chawli. As per his version, on June 11,1988, at about 11.30 p.m. the appellant came out of his chawl with a gupti and went towards the road, whereas deceased Manubhai following the appellant on a bi-cycle and, therefore, P.W.No.2 and he followed deceased Manubhai, who was going in the direction of Zanzarka colony. He asserted that the appellant told the deceased that he should go away otherwise he would kill him, and when deceased Manubhai refused to leave that place, the appellant inflicted gupti blow on the chest of the deceased, as a result of which the deceased fell down. He claimed that after giving gupti blow, the appellant ran towards culvert of Sarangpur Cotton Mill No.2. The witness claimed that, at the time of incident, P.W. No.4 Babubhai Ramjibhai and one Narshibhai (not examined) were also present. He deposed that the deceased was taken in an autorickshaw by the witness and P.W.No.2 Rameshbhai to Shardaben Hospital where the Doctor in-charge told them to take injured Manubhai to the Civil Hospital. He claimed that on reaching the Civil Hospital, the doctor who examined Manubhai declared him dead. The evidence of P.W.No.5, Ramanbhai, shows that the witness saw the appellant coming out of his chawl with a gupti at 11.30 p.m. FIR Exh.31 shows that the incident had taken place at 22.45 hrs. This witness has claimed that the deceased had followed the appellant who was going in the direction of Zanzarka colony. No other eye witness has claimed that the deceased was following the appellant on a

bi-cycle towards Zanzarka colony. The evidence of this witness goes contrary to the evidence of complainant, P.W. No.2 Rameshbhai and another eye witness P.W. no.4 Babubhai. The witness is related to the deceased as well as P.W.No.2 Rameshbhai and, therefore, his evidence requires to be scrutinized carefully. If the evidence of this witness is scrutinized carefully, in our opinion, it is clear that his evidence is contrary to the evidence of complainant, P.W. No.2. Rameshbhai, and P.W. No.4 Babubhai. Both complainant, P.W. No.2. Rameshbhai, and P.W. No.4 Babubhai - have not deposed that the deceased was following the appellant on a bi-cycle towards Zanzarka colony. The witness had accompanied P.W.No.2 Rameshbhai to the Civil Hospital in an auto-rickshaw while the deceased was taken in injured condition. In our opinion, P.W. No.5 Ramanbhai Panabhai is not an eye witness. If he had witnessed the incident, his name would have definitely been figured in FIR Exh.31. His evidence does not inspire confidence because he is not a witness of truth. P.W.No.5 had arrived at the place of incident at 11.30 p.m. whereas FIR Exh.31 mentions that the incident had taken place at 22.45 hrs.. Therefore, the presence of P.W. No.5 at the place of incident is doubtful.

The evidence of three eye witnesses, namely, P.W. No.2, Rameshbhai, P.W. No.4, Babubhai Ramjibhai, P.W. No.5 Ramanbhai Panabhai, is quite contradictory with each other. The contradictory evidence of three eye witnesses does not get corroboration from any other reliable evidence. It becomes evidently clear that FIR Exh 31 knocks down the presence of eye-witnesses P.W. No.4, Babubhai Ramjibhai, P.W. No.5 Ramanbhai Panabhai at the place of incident. FIR Exh.31 shows that the incident had taken place at 11.45 p.m. on June 11, 1988, whereas the dead body of the deceased was brought to the Civil Hospital at 0.45 a.m. on June 12,1988. No satisfactory explanation is produced by the prosecution as to why the injured was first taken to Shardaben Hospital. It is worthwhile to mention that, if one goes to Shardaben Hospital from the place of incident, he would first reach Gomtipur Police Station, and yet, no complaint was lodged at the Gomtipur Police Station. The evidence of eye witnesses does not establish that the appellant and the appellant alone inflicted gupti blow on the chest of the deceased.

The learned Additional Sessions Judge has concluded that the appellant had motive to kill the deceased, as he had insulted Jayantilal alias Jano, who

is the uncle of the appellant, on June 10, 1988. This conclusion arrived at by the learned Additional Sessions Judge with regard to motive to commit the murder of the deceased by the appellant is not well founded and finding on this score, deserves to be set aside. It is an admitted fact that the deceased had come heavily drunk on June 10, 1998 at about 10 p.m. The appellant was not present at that time near the cabin of Natubhai. The deceased had told the uncle of the appellant to go away from the place near the cabin of Natubhai. The uncle of the appellant told the deceased that he would teach him a lesson. This piece of evidence, in our opinion, does not prove that the appellant, with a view to taking revenge of insult of his uncle, had motive to commit murder of the deceased. As per the prosecution case, the first incident took place on June 10, 1988, when 50 to 60 people had gathered. The deceased was found in drunken condition near the cabin of Natubhai. No independent witnesses are examined to prove that the uncle of the appellant was insulted by the deceased and the uncle of the appellant, in turn, threatened the deceased with dire consequences. We do not concur with the conclusion of the learned Additional Sessions Judge that the appellant had motive to kill the deceased.

As discussed in the foregoing paragraphs, the evidence of three eye-witnesses is inconsistent with each other. Absence of blood at the place of incident shows that the prosecution witnesses are trying to suppress the real genesis of the prosecution story. The panchanama of scene of offence was drawn on June 12, 1988 at about 8 a.m. There is no definite evidence on record to show that, after occurrence, blood was wiped out from the place of occurrence. Vardhi Exh.31 shows that the incident had taken place at 22.45 hrs. on June 11, 1988. P.W. No.4 Babubhai Ramjibhai P.W. No.5 Ramanbhai Panabhai had arrived at the place of incident after 11.30 p.m. and, therefore, their presence at the place of occurrence when the appellant had inflicted gupti blow on the deceased, is ruled out. The evidence of complainant P.W. No.2 Rameshbhai is full of contradictions and improbabilities. The deceased, after the assault, was taken in an auto-rickshaw to Shardaben Hospital. On way to Shardaben Hospital from the place of incident, Gomtipur Police Station is situated and an FIR could have been easily lodged at the said police station. The fact that the complaint was lodged by P.W. No.2 Rameshbhai at 2.30 a.m. on June 12, 1988, also shows that, after deliberation, the complaint was lodged at the Gomtipur Police Station. In our opinion, the prosecution has tried to substantiate the charge against the appellant by creating false evidence of P.W. No. 4 and P.W. No.5 as

eye witnesses. P.W. No.5, Ramanbhai Panabhai, in his oral testimony, stated that the deceased had followed the appellant on a bi-cycle and proceeded towards Zanzarka colony. It is worthwhile to mention that no bi-cycle of the deceased was seized by the police during investigation. It also requires to be stated that other two eye witnesses, P.W. No.2 Rameshbhai and P.W. No.4 Babubhai, did not mention that the deceased had followed the appellant on a bi-cycle. This inconsistent evidence of three eye witnesses, in our opinion, does not inspire confidence and we are of the opinion that all the three eye witnesses are not truthful witnesses and they are trying to suppress the real genesis of the prosecution story. As discussed in the foregoing paragraphs, according to P.W. No.1, Dr. Bhise, two unjuries were found on the body of deceased Manubhai. Dr.Bhise, in his oral testimony before the court, specifically deposed that both the injuries were possible by a sharp edged pointed weapon like muddamal gupti. Ocular evidence of three eye-witnesses discloses that the appellant had given only one blow on the chest of the deceased. It is well established principles of criminal jurisprudence that, when ocular evidence is totally inconsistent with the medical evidence, in a given case, it is sufficient to discredit the entire prosecution story. In a murder case, if there is glaring inconsistency between ocular evidence and medical evidence, it will be hazardous to base conviction on such evidence. It is the prosecution case that, after assault on the deceased, P.W. No.2 Rameshbhai, who is the brother of the deceased, and P.W. No.5, Ramanbhai Panabhai, had taken the deceased to the hospital in an auto-rickshaw. Due to infliction of the gupti blow on the chest of the deceased, there was profuse bleeding from the wound. In spite of this fact, the investigating agency did not seize clothes of the above two witnesses during the investigation. Clothes of above two witnesses must have been stained with blood of the deceased, but, for the reasons best known to the investigating agency, their clothes were not seized. The deceased was virtually lifted by the above two witnesses and was taken in an auto-rickshaw to the hospital. Absence of blood-stains on their clothes raises serious doubt in our mind about their physical presence at the time of occurrence of the incident. In our opinion, conviction of the appellant on the above-referred inconsistent evidence of the prosecution witnesses, cannot be upheld under Section 302 of the Indian Penal Code and Section 135 of the Bombay Police Act. Under the circumstances, the conviction of and Section 135 of the Bombay Police Act, is liable to be set aside, and the appeal deserves to be allowed.

For the foregoing reasons, the appeal succeeds.  
Judgment and order dated May 10, 1989, rendered by the  
learned City Additional Sessions Judge, Court  
No.8,Ahmedabad, convicting the appellant under Section  
302 of the India Penal Code and Section 135 of the Bombay  
Police Act, and the sentence imposed on the appellant are  
hereby set aside. The appellant be set at liberty unless  
his presence is needed in any other case. Muddamal is  
ordered to be disposed of in terms of directions given by  
the learned Judge in the impugned judgment.

\*\*\*\*\*

(swamy)